

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
February 3, 2004**

PLACE: Room 206
Town Hall

TIME: 8:00 P.M.

PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:
Damanti, Spain, Forman, Conze, Kenny

STAFF ATTENDING: Ginsberg, Keating
COURT RECORDER: Beler

The meeting was called to order at 8:00 p.m. in Room 206 of the Town Hall. The first item was the Public Hearing. Chairman Damanti read the following agenda item:

PUBLIC HEARING

Business Site Plan #90-K, Pear Partners, LLC, 1077 Boston Post Road. Public hearing to determine whether to authorize Town Counsel to sign the drafted stipulated judgment regarding a proposed settlement of litigation regarding this project. The application was to renovate and to construct additions and alterations to the existing building and perform related site development activities. The subject properties are on the northwest side of Boston Post Road, approximately 550 feet northeast of its intersection with Leroy Avenue, and is shown on Tax Assessor's Map #73, as Lots #7 and #42 in the CBD Zone, with shared parking on Lots #40 and #41 in the CBD and PR Zones.

Mr. Damanti explained that the Planning & Zoning Commission had approved the project on November 25, 2003, subject to a number of conditions and stipulations. The applicant has appealed the decision and there have been numerous settlement discussions regarding modifications to the stipulations and conditions of approval. The Planning & Zoning Commission has met in Executive Session to discuss the pending litigation and the possible settlement of the court case. The draft Stipulated Judgment is a result of the efforts by the applicant and their counsel as well as the Commission and their counsel to revise the stipulations and conditions in a manner which would be acceptable to the applicant and clarify any ambiguity. The Commission members had received a copy of the draft Stipulated Judgment and a copy of the draft has been made available to the public for review for about one week. Legal notice was published in the newspaper to ensure that the public would know about the Public Hearing to discuss the proposed settlement of the litigation.

Mr. Spain noted that the current version of the draft Stipulated Judgment shows the old language struck out and the new language is underlined. If the Commission does decide to move forward with the Stipulated Judgment, there should be a clean copy with only the final language. That copy would be easier to read in the future and would reflect the action of the Commission.

Chairman Damanti asked if there were any comments from the public. Although there were numerous people in attendance, there were no comments from the public.

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Chairman Damanti said that the Planning & Zoning Commission had discussed this matter at length during the Executive Session and the Commission members seemed to be satisfied with the revised language of the draft Stipulation. Seeing no one from the public wishing to speak, Mr. Damanti asked if there was a motion to close the hearing. The following motion was made: that the Commission close the Public Hearing regarding the drafted Stipulated Judgment. The motion was made by Mrs. Forman, seconded by Mr. Kenny and unanimously approved. The Public Hearing was then closed at 8:10 p.m.

GENERAL MEETING

Chairman Damanti called the General Meeting to order. In attendance were Chairman Damanti and Joseph Spain, Ursula Forman, Fred Conze and David Kenny. Staff were Jeremy Ginsberg and David Keating.

The General Meeting was called to order at 8:11 p.m. Chairman Damanti read the following agenda item:

Business Site Plan #90-K, Pear Partners, LLC, 1077 Boston Post Road. To determine whether to authorize Town Counsel to sign the drafted stipulated judgment regarding a proposed settlement of litigation regarding this project. The application was to renovate and to construct additions and alterations to the existing building and perform related site development activities. The subject properties are on the northwest side of Boston Post Road, approximately 550 feet northeast of its intersection with Leroy Avenue, and is shown on Tax Assessor's Map #73, as Lots #7 and #42 in the CBD Zone, with shared parking on Lots #40 and #41 in the CBD and PR Zones.

Mr. Damanti said that the Public Hearing regarding the drafted Stipulated Judgment had been conducted and there were no comments from the public. The Commission members have reviewed the drafted Stipulated Judgment and noted that it incorporates the comments and modifications as discussed by the Commission during a previous Executive Session. He also noted that there were no comments in writing submitted to the Commission.

Mr. Spain said that everyone is working very hard to address the issues and concerns of all parties, including the Town, adjacent owners and business tenants, the property owners and the prospective tenants. He thanked the counsels representing the Town and the applicant for their hard work.

The following motion was made: To approve the modification of the Planning & Zoning Commission Adopted Resolution dated November 25, 2003 in accordance with Exhibit A attached to the draft Stipulated Judgment with reference to the settlement of the litigation styled "Pear Partners, LLC v. Planning & Zoning Commission of the Town of Darien." The motion was made by Mr. Conze, seconded by Mr. Kenny and unanimously approved.

The following motion was made: That the Planning & Zoning Commission authorizes the Town Counsel to execute the Stipulated Judgment with reference to the settlement of the litigation styled "Pear Partners, LLC v. Planning & Zoning Commission of the Town of Darien" in accordance with Exhibit A of the Planning & Zoning Commission Adopted Resolution dated November 25, 2003 as modified by the Planning & Zoning Commission on February 3, 2004. The motion was made by Mrs. Forman, seconded by Mr. Kenny and unanimously approved.

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Chairman Damanti read the following agenda item:

Preliminary Conservation Subdivision Application #605, Graham & Bill, LLC, 108 West Avenue.

Discussion per Section 843 of the Darien Zoning Regulations.

Attorney Robert Maslan represented the prospective developers and explained that the property is on the south side of West Avenue and is adjacent to the Darien Auto Body Shop that is located in a Service Business Zone. The subject property is in the R-1/3 Residential Zone but many of the lots on the south side of West Avenue are long and narrow. Many are approximately 50 feet wide instead of the 80 feet required lot width in the R-1/3 Zone. Mr. Maslan said that the Stony Brook runs near the southeast corner of the site and that there is some wetlands and flood plain area adjacent to the brook. The property is 2.141 acres and currently contains five old, residential buildings plus a garage/barn. It appears from old records that the buildings were built in 1915 or so. Mr. Maslan said that there is a 50 foot wide Connecticut Light & Power (CL&P) easement through the rear portion of the site. This easement allows for the placement of poles and wires.

Mr. Maslan said that the site is generally higher than West Avenue and that Old Parish Road intersects West Avenue opposite the site.

Mr. Maslan reviewed a conventional subdivision plan showing how 4 building lots could be created from the 2.1 acre parcel. He noted that each of the building envelopes is pushed to the rear of the site because the front portion of the property is more narrow than the rear portion of the site. He said that this results in the houses being close to the railroad tracks and each driveway would be steep, close to 10% grade. He said that many trees would need to be cleared and not much open space would be preserved.

Mr. Maslan then reviewed the proposed Conservation Subdivision Plan that includes constructing a short street in the vicinity of the existing driveway into the site. The existing driveway would be widened and improved sight lines would be created so that vehicles could safely enter West Avenue. All of the driveways for the new houses would come from the new street and therefore there would only be one curb cut from West Avenue rather than 4 separate driveways. Mr. Maslan said that the Conservation Subdivision Plan still results in 4 building lots and could preserve a large wooded area along the railroad tracks that coincides with the CL&P easement. He said that the new lots would be wider than many of the other lots on West Avenue. Mr. Maslan said that the area of the new street needs to be excavated so that they would cut down the hill and make the new street lower to correspond to the grade of West Avenue.

Mr. Maslan said that the applicants have considered the possibility of creating a fifth lot if the Commission would allow them to do so. They would dedicate the use of this fifth lot for people with special needs so that a group home could be created. In response to questions, Mr. Maslan and his clients said that the proposed houses would contain approximately 2800 square feet or so, but the exact size would depend on market conditions. They also told the Commission that a Phase Two Environmental Study had been conducted. Soil sampling revealed no chemical contamination of the site.

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Mr. Conze said that rather than creating 4 or 5 small lots, it might be better to maintain one single parcel than to have 4 or 5 houses on the site. This would be a common interest development or condominium type development with no interior lot lines.

Zoning Enforcement Officer David Keating expressed concern about the alignment of the proposed street on the south side of West Avenue with the existing street intersection of Old Parish Road on the north side of West Avenue. He said that the subdivision regulations require a minimum of 150 foot separation between such intersections. In this case the design would only have a 75 foot separation. He suggested that the alternative would be to design the new street directly across from Old Parish Road rather than being offset an insufficient amount.

The Commission members asked that the applicant continue to work on schematic designs so that the matter could be discussed at a future meeting.

No action was taken regarding the project.

Chairman Damanti read the following agenda item:

Land Filling & Regrading Application #30-A, Brian & Casey Lange, 20 Circle Road. Proposal to remove the top of the existing ledgerock hill and add topsoil to create a relatively level area and perform related site development activities. Subject property is located on the northeast side of Circle Road, approximately 1800 feet south of its intersection with Old King's Highway North, and is shown on Tax Assessor's Map #33 as Lot #48-B, in the R-1 Zone.

The following motion was made: that the Commission waive the process of reading the entire Draft Resolution aloud because each member has had an opportunity to review the Draft Resolution prior to the meeting. The motion was made by Mr. Conze, seconded by Mrs. Forman and unanimously approved. The following motion was made: that the Commission adopt the following Resolution to approve the Land Filling & Regrading Application subject to the findings and conditions in the Resolution:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
February 3, 2004**

Application Number: Land Filling and Regrading Application #30-A

Tax Assessor's Map #33 Lot #48-B

Name and Address of Property Owner: Brian & Casey Lange
And Applicant: 20 Circle Road
Darien, CT 06820

Activity Being Applied For: Proposal to remove the top of the existing ledgerock hill and add topsoil to create a relatively level area and perform related site development activities.

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Property Location: The subject property is located on the northeast side of Circle Road, approximately 1800 feet south of its intersection with Old King's Highway North.

Zone: R-1 Zone

Date of Public Hearing: January 27, 2004

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: January 15 & 22, 2004

Newspaper: Darien News-Review

Date of Action: February 3, 2004

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:
February 12, 2004

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The proposal is to remove the top of the existing ledgerrock hill and add topsoil to create a relatively level area and perform related site development activities. At the public hearing on this matter, the applicant noted that all filling and regrading activity will occur more than 25 feet from the property line. There are no drainage involved with the regrading, as the project will be removing impervious ledge rock, and replacing it with pervious lawn area. The project is expected to take 1-2 days.
2. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
3. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

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NOW THEREFORE BE IT RESOLVED that Land Filling Application #30-A is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. The filling and regrading shall be in accordance with the plans and materials submitted to the Commission.
- B. Due to the minor nature of the project, the provision of a Performance Bond is hereby waived.
- C. During the filling and regrading project, the applicant shall utilize any measures as may be necessary due to site conditions. Those sediment and erosion controls shall be installed to properly manage storm water runoff and to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- D. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- E. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency.
- F. This permit shall be subject to the provisions of Section 858 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (February 2, 2005). This may be extended as per Section 858.

All provisions and details of the submitted plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action, or this approval shall become null and void.

The motion was made by Mr. Conze, seconded by Mrs. Forman and unanimously approved.

Chairman Damanti read the following agenda item:

Mandatory Referral, Coastal Site Plan Review #167-B, Flood Damage Prevention Application #176-B, Darien Sewer Commission/DPW, Long Neck Point Road, Pear Tree Point Road, Crane Road sewer extension project. Proposal to construct a sanitary sewer line within the bridge deck of the Ring's End Road bridge, to connect the proposed (and previously approved) sanitary sewer line on Long Neck Point Road to the existing sewer on Ring's End Road.

The Commission members conducted a Public Hearing on January 27, 2004 regarding the proposed changes to the sanitary sewer design. Commission members agreed that there did not seem to be

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much choice about the method of installing the sanitary sewer, although they would have preferred to have been told about this design earlier in the process. Commission members agreed that the revised design, which involves installing the sanitary sewer in the pavement of the Ring's End Road Bridge, rather than using directional boring to go under the water body, does not appear to have any adverse coastal impacts or flooding impacts. With respect to the mandatory referral, the Commission members said that the intent is to provide sanitary sewers to the Long Neck Point Road area and this is just a different way to implement that project. They directed the staff to draft a resolution to approve the proposed changes. Action on the application will be taken at a future meeting.

Chairman Damanti read the following agenda item:

Special Permit Application #234, Jay Ragusa d/b/a Gofer Ice Cream, LLC, 1014 Boston Post Road. Proposing to establish an ice cream parlor within the existing building.

Commission members noted that the applicant is counting on the use of the Dolcetti parking lot next door. The Dolcetti/Dolman Properties, LLP property is already developed and might be redeveloped in the future. The permission to use the Dolcetti/Dolman Properties, LLP parking area is only temporary and can be withdrawn at any point in the future. Commission members directed the staff to draft a resolution to approve the project but made it clear that if there is a change in the parking circumstances, the applicant may need to address that issue to the satisfaction of the Commission.

Chairman Damanti read the following agenda item:

Coastal Site Plan Review #189, Nine Pratt Island Trust, 9 Pratt Island. Proposing to raze a portion of the existing residence and reconstruct that portion of the residence and perform related site development activities within a regulated area.

The Commission members discussed the proposed construction project. They noted that most of the existing building will be demolished but three small sections of the walls and roof will be preserved. Those three sections are non-conforming with respect to setbacks from the property lines. The applicant has indicated that they will preserve those portions of the building and the applicant has not applied to the Zoning Board of Appeals for a variance. Commission members noted that if those sections of the building are removed, the building design would need to be modified to eliminate those sections of the building and make sure that the entire building conforms to the setback requirement or the applicant would need to go to the Zoning Board of Appeals and request a variance. One Commission member asked what the hardship would be for requesting such a variance. Other Commission members agreed that the applicant was assuming a substantial risk by designing the new building to incorporate portions of the old building that are to be preserved.

The Commission directed the staff to draft a resolution with careful wording regarding the preservation of the portions of the building as shown on the submitted plans and noting that if there are problems with saving those portions of the building, then the applicant would need to come back to the Planning & Zoning Commission with a revised design and/or obtain variances from the Zoning Board of Appeals.

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Chairman Damanti read the following agenda item:

Flood Damage Prevention Application #200, Land Filling & Regrading Application #114, Carol Tellini, Ashton Holdings, LLC, 24 Lake Drive. Proposing to raze the existing residence and construct a new single-family residence and perform related site development activities within a regulated area.

Commission members noted that the development of the site will be difficult due to the restricted lot area, but did direct the staff to draft a resolution to approve the project. The Commission will act on the application at a future meeting.

Chairman Damanti read the next agenda item:

Approval of Minutes

January 27, 2004 Executive Session/Public Hearing/General Meeting

The motion to approve the minutes as written was made by Mr. Conze, seconded by Mr. Spain and unanimously approved.

There being no further business, the meeting was adjourned at 9:20 p.m.

Respectfully submitted,

David J. Keating
Assistant Director of Planning